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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 JOHN MARK VAN DEN HEUVEL,

12 Plaintiff,

13 v.

14 ADAM CLARK,

15 Defendant.
16

No. 2:23-CV-0708-KJM-DMC-P

ORDER

17 Plaintiff, who is proceeding pro se, brings this civil rights action pursuant to 42
18 U.S.C. § 1983. Pending before the Court is Plaintiff's first amended complaint, ECF No. 13.

19 The Court is required to screen complaints brought by prisoners seeking relief
20 against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C.
21 § 1915A(a). This provision also applies if the plaintiff was incarcerated at the time the action was
22 initiated even if the litigant was subsequently released from custody. See Olivas v. Nevada ex rel.
23 Dep't of Corr., 856 F.3d 1281, 1282 (9th Cir. 2017). The Court must dismiss a complaint or
24 portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can
25 be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See
26 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that
27 complaints contain a “. . . short and plain statement of the claim showing that the pleader is
28 entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply,

1 concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to
2 Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice
3 of the plaintiff's claim and the grounds upon which it rests. See Kimes v. Stone, 84 F.3d 1121,
4 1129 (9th Cir. 1996). Because Plaintiff must allege with at least some degree of particularity
5 overt acts by specific defendants which support the claims, vague and conclusory allegations fail
6 to satisfy this standard. Additionally, it is impossible for the Court to conduct the screening
7 required by law when the allegations are vague and conclusory.

8 This case proceeds on Plaintiff's first amended complaint filed as of right on
9 August 28, 2023. See ECF No. 13. Plaintiff names attorney Adam Clark as the sole defendant.
10 See id. at 1. Plaintiff's allegations are somewhat difficult to discern, but it appears Plaintiff is
11 alleging that Defendant Clark provided ineffective representation in the context of criminal
12 proceedings in the El Dorado County Superior Court. See id. Plaintiff was in custody when the
13 action was initiated, see id., but has since been released, see ECF No. 8. It is unclear from the
14 complaint whether Plaintiff's former incarceration was a result of a conviction arising from the
15 referenced criminal proceedings.

16 As currently presented, it appears that Plaintiff's complaint may be barred because
17 it amounts to an improper collateral challenge to a state criminal conviction. When a state
18 prisoner challenges the legality of his custody and the relief he seeks is a determination that he is
19 entitled to an earlier or immediate release, such a challenge is not cognizable under 42 U.S.C. §
20 1983 and the prisoner's sole federal remedy is a petition for a writ of habeas corpus. See Preiser
21 v. Rodriguez, 411 U.S. 475, 500 (1973); see also Neal v. Shimoda, 131 F.3d 818, 824 (9th Cir.
22 1997); Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995) (per curiam). Thus, where
23 a § 1983 action seeking monetary damages or declaratory relief alleges constitutional violations
24 which would necessarily imply the invalidity of the prisoner's underlying conviction or sentence,
25 or the result of a prison disciplinary hearing resulting in imposition of a sanction affecting the
26 overall length of confinement, such a claim is not cognizable under § 1983 unless the conviction
27 or sentence has first been invalidated on appeal, by habeas petition, or through some similar
28 proceeding. See Heck v. Humphrey, 512 U.S. 477, 483-84 (1994) (concluding that § 1983 claim

1 not cognizable because allegations were akin to malicious prosecution action which includes as
2 an element a finding that the criminal proceeding was concluded in plaintiff's favor).

3 In this case, Plaintiff appears to allege that Defendant Clark provided ineffective
4 assistance of counsel during the course of criminal proceedings against Plaintiff in state court. If
5 this is indeed the gravamen of Plaintiff's claim, the action would be barred because success on the
6 merits of Plaintiff's claim of ineffective assistance of counsel would necessarily imply the
7 invalidity of the underlying conviction. Further, it is unclear whether the underlying conviction
8 Plaintiff appears to challenge in this case has been invalidated or otherwise overruled or set aside,
9 which would be a prerequisite for this action to proceed. Plaintiff will be provided an opportunity
10 to amend to clarify his allegations against Defendant Clark.

11 Because it is possible that the deficiencies identified in this order may be cured by
12 amending the complaint, Plaintiff is entitled to leave to amend prior to dismissal of the entire
13 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is
14 informed that, as a general rule, an amended complaint supersedes the original complaint. See
15 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to
16 amend, all claims alleged in the original complaint which are not alleged in the amended
17 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if
18 Plaintiff amends the complaint, the Court cannot refer to the prior pleading in order to make
19 Plaintiff's amended complaint complete. See Local Rule 220. An amended complaint must be
20 complete in itself without reference to any prior pleading. See id.

21 If Plaintiff chooses to amend the complaint, Plaintiff must demonstrate how the
22 conditions complained of have resulted in a deprivation of Plaintiff's constitutional rights. See
23 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
24 each named defendant is involved and must set forth some affirmative link or connection between
25 each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d 164, 167
26 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

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1 Finally, Plaintiff is warned that failure to file an amended complaint within the
2 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
3 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply
4 with Rule 8 may, in the Court's discretion, be dismissed with prejudice pursuant to Rule 41(b).
5 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. Plaintiff's first amended complaint is dismissed with leave to amend; and
- 8 2. Plaintiff shall file a second amended complaint within 30 days of the date
9 of service of this order.

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11 Dated: May 21, 2024



12 DENNIS M. COTA
13 UNITED STATES MAGISTRATE JUDGE
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